

Schary, Claire


From: Croxton, Dave
Sent: Wednesday, January 21, 2015 10:59 AM
To: Schary, Claire
Subject: FW: Article on OR & Water Quality Trading

From: Schary, Claire
Sent: Friday, September 26, 2014 6:37 PM
To: Psyk, Christine; Carlin, Jayne; Croxton, Dave; Fullagar, Jill; Henning, Alan; Jacobson, Martin; Livingstone, Gail; Mann, Laurie; Ramrakha, Jayshika; Rueda, Helen; Schary, Claire; Stewart, William C.; Turvey, Martha; Woodruff, Leigh; Wu, Jennifer
Subject: FW: Article on OR & Water Quality Trading

This is very relevant to the presentation I gave on Thursday at our unit retreat.

-- Claire

From: Keenan, Dru
Sent: Friday, September 26, 2014 1:37 PM
To: Schary, Claire; Wu, Jennifer; Labiosa, Rochelle; Poulsom, Susan; Burgess, Karen
Subject: Article on OR & Water Quality Trading

News Headline: Oregon Eyes New Water Trading Policy In Absence Of EPA Updating Guide | 

Outlet Full Name: Inside EPA Weekly Report

News Text: Oregon is crafting new rules to overhaul its novel but little-used water quality trading program in order to promote wider adoption of trading to improve water quality, in the absence of any EPA update to its 2003 guidance on water trading that advocates are urging the agency to update to better encourage use of the trading practices.

If Oregon completes its planned rulemaking, the new policies could serve as a model to other states and interstate groups that have worked to encourage trading through state-level regulation, as EPA has been unwilling to update its guidance on the subject, which critics say does not do enough to support trading programs.

Trading proponents have pressed the agency to update and strengthen the 2003 Clean Water Act (CWA) guidance to support the programs in more depth, though they have stopped short of formally calling for national trading regulations. For instance, members of the National Water Quality Trading Alliance met Aug. 21 with Ken Kopocis, the deputy assistant administrator of the Office of Water, to renew calls for updating and strengthening the guidance (Inside EPA, Aug. 29).

Until EPA decides whether to act on those recommendations, states in favor of water trading such as Oregon are pursuing their own efforts to promote the practices. Supporters of water quality trading say it allows dischargers, states and landowners to meet more stringent cleanup goals at a lower overall cost compared to traditional permit limits by transferring some of the compliance burden to facilities that can more easily reduce pollutant discharges.

In the latest example of a state's efforts, the Oregon Department of Environmental Quality (ODEQ) announced Sept. 23 that it plans to "strengthen and clarify" its trading policies, including creating a regulatory framework by the end of 2015 to supplement the internal guidance that currently governs the program.

"We allow water quality trading, but there's been two or three trades on the books in the last decade. We want to improve that," an ODEQ source says.

The source says ODEQ's new policies will be based in part on a preliminary report from an interstate working group that has discussed updates to state trading policies, "Draft Regional Recommendations for the Pacific Northwest on Water

Quality Trading," that was released in August. The report is available on InsideEPA.com. (Doc. ID: 2482238)

The report recommends that states implement trading as a condition of dischargers' National Pollutant Discharge Elimination System (NPDES) permits, with detailed terms for allowable trades included in the permit terms, and says such permits should be used mainly for waterbodies covered by total maximum daily load (TMDL) cleanup plans, or that are likely to become impaired in the near future.

That focus would build on Oregon's current program, under which trading is often listed as a tool to achieve TMDL goals, but is rarely implemented.

In addition to recommending specific trading language in permit terms, the interstate working group also calls on states to use regulation to strictly define their programs' requirements for eligibility and how they measure water quality improvements from successful trades, as well as including oversight provisions to ensure that traders are complying with program terms.

"Even if a permittee relies on other entities to develop or implement its trading plan, ultimately, the permittee bears the regulatory liability for ensuring that credits are functioning," the report says.

In particular, the state will seek to craft a specific regulatory baseline for trading -- the level of water quality at which regulators will allow trading in a watershed.

"There's been a certain lack of clarity on the regulatory baseline for trading, which is probably part of the reason the program has not been used much," the ODEQ source says.

Oregon's potential rules would lay out much more specific requirements than EPA's current trading policy, written in 2003, which generally encourages trading of credits representing pollution reductions between and among both point and nonpoint sources, as long as the trade does not result in a permit violation or other regulatory exceedances.

A source with knowledge of the Aug. 21 National Water Quality Trading Alliance meeting with Kopocis on updating the guide said the alliance had a "productive dialogue" with Kopocis and his leadership team, saying the meeting "marks the beginning of an ongoing dialogue and engagement with the agency on how to make trading more robust, defensible, and a tool that can accelerate the restoration of impaired waters and aquatic ecosystems."

But the agency has said it lacks explicit CWA authority to require or oppose trading, and the lack of language on water quality trading in the law has led to several facial challenges to the practice from environmental groups.

Although a federal district court dismissed a novel challenge to EPA's encouragement of state-based trading to achieve the goals of the Chesapeake Bay TMDL, it did so on procedural grounds, leaving the practice open to case-by-case challenges from environmentalists.

Trading advocates have worried that environmentalists could mount similar lawsuits on an individual basis as states adopt their own trading regimes. A new statement from EPA which "codifies" trading authority under the CWA would help stave off such suits, they say.

Both industry and environmental supporters of trading discussed the need for more certainty and enforceability in nonpoint to point source trades at a House transportation committee water resources and environment subcommittee hearing in April.

One source at the hearing said that third party verifiers could help ease such uncertainty, but nonpoint source dischargers, such as farmers, say that third party certification requirements make generating credits too costly to give them incentive to participate in trading programs.

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